

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

BLACK LOVE RESISTS IN THE RUST, *et al.*,
on behalf of themselves and all those similarly
situated

Plaintiffs,

v.

CITY OF BUFFALO, *et al.* ;

No. 1:18-cv-719

Defendants.

**MOTION FOR ISSUANCE OF SUBPOENA TO
NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES**

On the annexed Declaration of Edward P. Krugman, executed on September 6, 2021, Plaintiffs hereby move for an order approving the issuance of a subpoena *duces tecum* to the New York State Department of Motor Vehicles (“DMV”) in the form annexed hereto as Exhibit B. A proposed form of Order is annexed as Exhibit A. Per the motion to shorten time filed simultaneously herewith, Plaintiffs seek to make this motion returnable on September 17, 2021, with answering papers due on September 10 and reply papers on September 14.

Although the Federal Rules of Civil Procedure do not expressly provide for a Court to “So Order” the issuance of a subpoena, neither do the Rules prohibit such an order. This motion is made because the DMV, as a matter of posted policy on its website (which has been confirmed in discussions with DMV personnel), will honor a federal subpoena only if it has been “ordered by a federal court.” <https://dmv.ny.gov/dmv-records/how-serve-subpoena>. Regardless of whether this policy is consistent with the Supremacy Clause (or anything else), Plaintiffs are prepared to comply with it. Hence this motion.

The subpoena as annexed hereto is not dated. Upon entry of the order for issuance, Plaintiffs will date the subpoena and set a return date 14 days after service. Plaintiffs will, of course, be prepared to discuss appropriate extensions of time to respond with the DMV if need be, but Plaintiffs believe that an extension may in fact not be necessary.

WHEREFORE, Plaintiffs respectfully request entry of the Order annexed hereto as Exhibit A, directing issuance of the subpoena annexed hereto as Exhibit B.

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Dated: September 6, 2021

CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2021, the foregoing document was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the Western District's Local Rules, and/or the Western District's Case Filing Rules & Instructions upon all counsel registered through the ECF System.

/s/ Edward P. Krugman